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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/090,979	03/05/2002	Ruth Louisa Blair	F3277(C)	7571
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UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

WEIER, ANTHONY J

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,979

Applicant(s)

BLAIR ET AL.

Examiner

Anthony Weier

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 1-14 in the paper filed 3/15/04 is acknowledged. The traversal is on the ground(s) that the claims of the invention are interrelated and that groups require a search of similar technical arts and that the search and examination of the entire patent application can be made without a serious burden to the Examiner (MPEP 803). This is not found persuasive because the search for each invention requires different search strategies. Moreover, the areas of search are not the same for both inventions.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. Claims 2, 4, 6, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In particular, claims 2, 4, 6, and 13 are indefinite in that they do not end in punctuation; thus, it is not clear whether said claims were intended to end as printed or whether more of each claim was inadvertently omitted.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 1, 2, and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Patil et al.

Patil et al discloses a process of manufacturing a large leaf black tea comprising withering tea leaves to a moisture content as claimed (e.g. "around 70%") and macerating same using both a rotorvane (which includes an extruding component) and CTC machine (which dices same) wherein same causes the tea to ferment and inherently provide for an infusion typical of CTC teas while maintaining the appearance of an orthodox tea. It should be noted that the terminology "around 70%" in Patil (Examples) encompasses at least the upper limit of the range 64-68% set forth in instant claim 2.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patil et al.

If it is shown that Patil et al does not disclose a withered moisture content of between 64 and 68%, it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided same in view of the language used by Patil et al of "around 70%" in describing a withered moisture content (see Examples) as well as the traditional moisture rates attained (see Background of Patil et al), and absent a showing of unexpected results, it would have been further obvious to have arrived at same as a matter of preference.

The claims further call fo sorting the black leaf tea into various sizes. However, it is notoriously well known to sort items, including tea leaves, by size, and absent a showing of unexpected results, it would have been further obvious to have arrived at such sorting categories, as claimed, as a matter of preference.

4. Claims 3-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patil et al. (as set forth in either one of paragraphs 3 or 4) taken together with SU 466015.

The claims further call for providing a modified rotorvane machine. SU 466015 teaches the use of a rotorvane type of machine for cutting tea wherein same has been produced in a manner to give the desired effect as set forth in instant claim 5 wherein said machine provides a method for giving uniform and effective, but not excessive shearing. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed same in the process of Patil et al for such reasons.

The claims further call for the particular blade used in the CTC machine. However, such determination would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been further obvious to have arrived at such blade as a matter of preference depending on the size of the tea bits desired.

The claims further call fo sorting the black leaf tea into various sizes. However, it is notoriously well known to sort items, including tea leaves, by size, and absent a showing of unexpected results, it would have been further obvious to have arrived at such sorting categories, as claimed, as a matter of preference.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
Primary Examiner
Art Unit 1761

Anthony Weier
June 1, 2004


6/1/04